

1  
2  
3  
4  
5  
6  
7  
8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
10

11 CARL FOUST,

12 Plaintiff,

13 v.

14 I. PEREZ, et al.,

15 Defendants.  
16

No. 2:23-CV-0179-DAD-DMC-P

FINDINGS AND RECOMMENDATIONS

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to  
18 42 U.S.C. § 1983. Pending before the Court are Plaintiff's motions requesting an order directing  
19 prison officials to provide a magnetic resonance imaging (MRI) scan. See ECF Nos. 34, 35, and  
20 37.

21 The legal principles applicable to requests for injunctive relief, such as a  
22 temporary restraining order or preliminary injunction, are well established. To prevail, the  
23 moving party must show that irreparable injury is likely in the absence of an injunction. See  
24 Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing Winter v. Natural Res.  
25 Def. Council, Inc., 129 S.Ct. 365 (2008)). When a mandatory injunction is sought – one that goes  
26 beyond simply maintaining the status quo during litigation – the moving party bears a "doubly  
27 demanding" burden and must establish that the law and facts clearly supports injunctive relief.  
28 See Garcia v. Google, Inc., 786 F.3d 733, 740 (9th Cir. 2015) (en banc). Mandatory injunctions

1 are "particularly disfavored" and "should not issue in doubtful cases." Id. (internal quotations  
2 omitted).

3 To the extent prior Ninth Circuit cases suggest a lesser standard by focusing solely  
4 on the possibility of irreparable harm, such cases are "no longer controlling, or even viable."  
5 Am. Trucking Ass'ns, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009). Under  
6 Winter, the proper test requires a party to demonstrate: (1) he is likely to succeed on the merits;  
7 (2) he is likely to suffer irreparable harm in the absence of an injunction; (3) the balance of  
8 hardships tips in his favor; and (4) an injunction is in the public interest. See Stormans, 586 F.3d  
9 at 1127 (citing Winter, 129 S.Ct. at 374). The Ninth Circuit also recognizes an additional  
10 standard: "if a plaintiff can only show that there are 'serious questions going to the merits' – a  
11 lesser showing than likelihood of success on the merits – then a preliminary injunction may still  
12 issue if the 'balance of hardships tips sharply in the plaintiff's favor, and the other two Winter  
13 factors are satisfied.'" See Shell Offshore, Inc. v. Greenpeace, Inc., 709 F.3d 1281, 1291 (9th Cir.  
14 2013) (quoting Alliance for the Wild Rockies v. Cottress, 632 F.3d 1127, 1135 (9th Cir. 2011)).

15 To prevail on a motion for injunctive relief, "there must be a relationship between  
16 the injury claimed in the motion for injunctive relief and the conduct asserted in the underlying  
17 complaint." Pac. Radiation Oncology, LLC v. Queen's Medical Ctr., 810 F.3d 631, 636 (9th Cir.  
18 2015). Thus, there must be a nexus between the claims raised in the motion and the claims in the  
19 underlying complaint itself. See id. This nexus is satisfied where the preliminary injunction  
20 would grant "relief of the same character as that which may be granted finally." See id. (quoting  
21 De Beers Consol. Mines, 325 U.S. 212, 220 (1945)).

22 The Court cannot issue an order against individuals who are not parties to the  
23 action. See Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 112 (1969).  
24 Moreover, if an inmate is seeking injunctive relief with respect to conditions of confinement, the  
25 prisoner's transfer to another prison renders the request for injunctive relief moot, unless there is  
26 some evidence of an expectation of being transferred back. See Prieser v. Newkirk, 422 U.S.  
27 395, 402-03 (1975); Johnson v. Moore, 948 F.3d 517, 519 (9th Cir. 1991) (per curiam). Finally,  
28 pursuant to the Prison Litigation Reform Act, any injunction with respect to prison conditions

1 "must be narrowly drawn, extend no further than necessary to correct the harm the court finds  
2 requires preliminary relief, and be the least intrusive means necessary to correct that harm." 18  
3 U.S.C. § 3626(a)(2); see also Wonnacott v. Heehn, 2021 WL 970453 (D. Oregon 2021).

4 In the pending motions, Plaintiff ask the Court to direct prison officials to provide  
5 an MRI scan. See ECF Nos. 34, 25, and 37. At the time Plaintiff filed his motions, he was  
6 housed at the California Health Care Facility. See id. Plaintiff has since been transferred to  
7 California State Prison – Los Angeles County. See ECF No. 59 (notice of change of address).

8 The Court finds that injunctive relief is not warranted for several reasons. First,  
9 this action presents cognizable claims based on allegations of use of excessive force. None of the  
10 cognizable claims in this case bear a relationship to the injury claims in the pending motions,  
11 specifically that Plaintiff's medical care will suffer absent an MRI scan ordered by this Court.  
12 Second, to the extent Plaintiff is seeking an order directed to prison officials at the California  
13 Health Care Facility concerning the conditions of Plaintiff's confinement at that facility, his  
14 transfer to a different facility without a showing not made here of an expectation of being  
15 returned, moots the pending motions. Third, Plaintiff has not demonstrated the likelihood of  
16 irreparable harm absent a court-ordered MRI scan.

17 Based on the foregoing, the undersigned recommends that Plaintiff's motions for  
18 injunctive relief, ECF Nos. 34, 35, and 47, be denied.

19 These findings and recommendations are submitted to the United States District  
20 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
21 after being served with these findings and recommendations, any party may file written objections  
22 with the Court. Responses to objections shall be filed within 14 days after service of objections.  
23 Failure to file objections within the specified time may waive the right to appeal. See Martinez v.  
24 Ylst, 951 F.2d 1153 (9th Cir. 1991).

25 Dated: March 3, 2025

26   
27 DENNIS M. COTA  
28 UNITED STATES MAGISTRATE JUDGE